



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-18/54820

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 12, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Eau Claire County Dept. of Human Services in regard to medical assistance, a hearing was held on November 7, 2002, at Eau Claire, Wisconsin. A hearing begun on October 8, 2002 was continued until November 7, 2002 so that the petitioner's spouse could gather additional information.

The issue for determination is whether the petitioner is entitled to an increase in income under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Steve Tilbury, ESS  
Eau Claire County Dept Of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) was a resident of a nursing home in Eau Claire County when he requested this hearing. He has since returned home.
2. The petitioner's spouse lives in the community.

3. The petitioner's monthly income is \$1,057 per month. His wife's monthly income is \$1,241.20.
4. The county agency determined that the petitioner's share of his institutional medical care is \$263.20 per month. The petitioner seeks to reduce his share of his medical costs and increase his allocation to his wife.
5. The petitioner submitted a budget that showed expenses of \$2,237.43 per month. These expenses included the following:
  - a. \$125 per month for various medical bills.
  - b. \$415 as the minimum payment for credit cards.
  - c. \$211 for gas, insurance and repairs on a 1989 Honda Civic. The car is paid for but breaks down regularly.
  - d. \$150 per month for food.
  - e. \$150 per month for utilities.
  - f. \$658.98 for two mortgages on the home.
  - g. \$248 for various life and health insurance policies held by the petitioner and his wife.
  - h. \$269 for the spouse's medicine.
6. The petitioner's budget did not include \$18 per month for a newspaper or \$49 per month for cable television.

### **DISCUSSION**

The petitioner lives in a nursing home and receives medical assistance while his wife remains in their family home. Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." §HFS 103.07(1)(d), Wis. Adm. Code. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. *See* §49.455, Wis. Stats. and 42 U.S.C. §13964-5. The allowance is the lesser of \$2,175 or \$1990 plus an excess shelter allowance, which is any shelter cost over \$597. *MA Handbook*, Appendix, §23.6.0. *BPS Operations Memo*, 02-23; issued March 19, 2002. An allowance to prevent spousal impoverishment can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the hearing officer's ability to raise the limit. Wisconsin law provides the following test for the exception:

If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse's monthly income allowance under sub. (4)(b).

§49.455(8)(c), Stats. Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the Division of Hearings and Appeals has long and consistently denied donations, including those to a church. *See, e.g.,* MRA-45/#22021 MRA-32/22456 MRA-05/37611 MRA-13/45972 MRA-14/22543.

The petitioner's income is \$1,057 per month. His wife's income is \$1,241.20 per month. After allocating \$748.80 to the spouse to allow her to have \$1,990 to meet her needs each month, and allowing the petitioner \$45 for his needs

each month, the county agency determined that the petitioner must pay \$263.20 toward his health care. He seeks to reduce his share of this medical costs and allocate this amount to his wife. The petitioner's wife submitted a budget showing expenses of \$2,237.43 per month. *Exhibit 1*. (See Finding of Fact No. 5 for details.) I questioned the petitioner on each item including the car and credit card expenses. The car expenses were an average arrived at by reviewing many months of expenses. Steve Tilbury, the county worker handling this matter, testified that he helped the petitioner's wife assemble and review the bills, and he found the estimate accurate. I accept the figure because it is a 13-year-old car that is likely to require frequent repairs. The credit card payment is the total minimum due each month on three different cards. After hearing the testimony on these and the remaining matters I find that the payments in the budget are all necessary to ensure that the petitioner's spouse meets her basic needs.

After the spouse is allocated sufficient income from the petitioner to raise the amount available to her to the \$2,237.43 listed in the budget, the petitioner still has a cost share of \$15.77 per month. At the hearing his spouse stated that she pays approximately \$18 per month for a newspaper and \$49 per month for cable services. Past decisions have not allowed expanded or premium cable, but have allowed basic cable, which costs approximately \$10 per month. *See MRA-18/42464*. In addition, I do not find a subscription to a daily newspaper unreasonable. These two items increase the basic needs of the petitioner's spouse sufficiently so that the petitioner does not have to pay a share of his institutional medical care costs.

### **CONCLUSIONS OF LAW**

1. After the petitioner receives his \$45 monthly allowance, he may allocate all of his remaining income to his spouse because she requires this allocation to meet her minimum monthly needs.
2. The petitioner shall not be assessed any cost for his share of his institutional medical assistance benefits.

**NOW, THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it shall reduce the petitioner's share of his institutional medical care to \$0 and allocate all of his income other than his \$45 personal allowance to his wife. This decision shall take effect retroactive to the first month that the petitioner was required to pay a share of his medical costs.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau  
Claire, Wisconsin, this 18th day of  
November, 2002

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/sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
122/MDO